



9 September 2022

Tēnā koe

On 6 July 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), information regarding section 195 of the Social Security Act.

We understand the difficulty facing parents under the benefit system where they share the care of children.

In the benefit system, the two common care situations for separated parents are split care and shared care. Split care is when parents with two or more children are living apart and each parent has the full-time care of at least one of their children. Shared care is when the parents of a dependent child live apart and both parents receive benefits, and each parent has the primary responsibility for the care of the child(ren) for at least 40% of the time. By law (Section 195 of the Social Security Act 2018), we can only include children in one parent's benefit payments. This parent is considered to be the primary caregiver. The primary caregiver will have the dependent children included in their payments and can receive the sole parent rate of benefit and other payments such as childcare assistance (including the Out of School Care And Recreation Subsidy (OSCAR)). The primary caregiver is generally the parent who cares for the children the majority of the time.

If the parents care for the child for an equal amount of time, we must consider a range of factors to determine who is the primary caregiver, including who decides children's daily activities, who makes decisions about education and health and who pays for which expenses.

If it is not clear who has the greater responsibility, we will consider who was primarily responsible for the care of the child immediately before separation. If we are unable to decide who is primarily responsible, the parents must agree which parent has primary responsibility. If there is no agreement between the parents on who is primarily responsible, we are not able to include the child in any benefit.

If the parent is not happy with Work and Income's decision, they are entitled to apply for a Review of Decision. This process allows for independent consideration of whether decisions are made in line with the appropriate legislation.

As part of the overhaul of the welfare system we will be providing further advice to the Minister for Social Development on recognising split-care and shared care arrangements in the welfare system to ensure more equitable access to the support and income needed to raise a child. In regard to the payment of child support, this is determined by Inland Revenue.

Your questions will be addressed in turn below:

- *Please supply the following information for each of the last three years (whether calendar years or financial years). According to the Ministry's records, where it has made a decision under s 195 (or its predecessor) in respect of a person's benefit:*
 - *How many parents have been the subject of a decision under s 195?*
 - *How many of those parents received the Supported Living Payment at the time of the decision?*
 - *How many of those parents (who received the Supported Living Payment) were deemed to be the "primarily responsible parent" per s 195(3)?*

Information regarding decisions under section 195 cannot be provided to you as this is held in notes on individual case files. In order to provide you with this information, Ministry staff would have to manually review a substantial number of files. As such, I refuse your request under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

However, in the spirit of being helpful, the Ministry has decided to provide you with **Table One** in the **Appendix** showing the number of working age main benefit clients with children in their care for at least 40% but less than 100% of the time, as at the end of financial years 2020 to 2022, broken down by the type of benefit.

Please note that the Ministry is unable to distinguish whether the clients in the data are deemed to be principal caregivers or not.

- *Please supply copies of all advice to Ministers or Cabinet since 1 January 2018 which mention:*
 - *the effect of ss 195 or 196 of the Social Security Act 2018 (or the predecessor to those sections); or*
 - *proposals to reform those sections; or*
 - *the Ministry's response to Recommendation 19 of the Welfare Expert Advisory Group's report entitled Whakamana Tāngata.*

On 26 July 2022, you refined the third point of this part of your request to be for the following:

- *the Ministry's response to the following suggested principle under Recommendation 19 of the WEAG Report: "Child-related payments follow the child and can be apportioned with shared care"*

Work around split and shared care arrangements is only mentioned briefly in the following two documents:

- *REP/21/1/003 – Welfare Overhaul – Work Programme Update, dated 7 May 2021*
- *Welfare Overhaul: Work Programme Update 2021*

However, all of the instances which relate to split and shared care arrangements in the documents cannot be released and has been withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

A handwritten signature in blue ink that reads "Polly Vowles". The signature is written in a cursive, flowing style.

Polly Vowles
Policy Manager
Welfare System and Income Support



Appendix

Table One: Number of working age main benefit clients with children in their care for at least 40% but less than 100% of the time, as at the end of financial years 2020 to 2022, broken down by the type of benefit.

Financial year end	Main benefits			Total	
	Jobseeker	Other main benefits	Sole Parent Support		Supported Living Payment
2020	429	27	1,800	183	2,439
2021	573	24	2,343	228	3,168
2022	537	30	2,820	276	3,657

Table One Notes:

- The Ministry's financial year commences on the 1st of July and ends at the 30th of June.
- Working age is 18 to 64 years old.
- Main Benefits exclude NZ Superannuation, Veteran's Pension, Non-Beneficiary assistance, Orphan's Benefit and Unsupported Child's Benefit.
- Supported Living Payment includes Supported Living Payment and Supported Living Payment Overseas clients.
- Sole Parent Support includes Sole Parent Support and Sole Parent Support Overseas clients.
- This data does not include clients with children in care for less than 40% of the time as they are not able to be included on a main benefit.
- The Ministry cannot confirm whether the clients are primary caregivers.
- To protect confidentiality the Ministry uses processes to make it difficult to identify an individual person or entity from published data. These data tables have had random rounding to a multiple of three applied to all cell counts in the table. The impact of applying random rounding is that columns and rows may not add exactly to the given column or row totals. The published counts will never differ by more than two counts.